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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,584	04/16/2001	Eugeniusz Rylewski	154.1049	3718

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/786,584

Applicant(s)
Rylewski

Examiner

Ljiljana V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 16, 2001 and on Dec 11, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Apr 16, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration.

Applicant's signature appears over a non-legible, non-initialed whited out portion of the declaration. See 37 CFR 1.52(c).

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the feature(s) canceled from the claim(s): the foil being made of a woven fabric, a non-woven fabric, tissue, or a plastic as cited in claim 1; and, the two heat exchangers associated respectively with each of the two extraction fans as cited in claim 9. No new matter should be entered.

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A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The abstract of the disclosure is objected to because it does not avoid using phrases which can be implied (i.e., "The invention concerns"). Correction is required. See MPEP § 608.01(b).
5. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- © Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
 1. Field of the Invention.
 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

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Claim Objections

6. Claims 1 through 11 are objected to because of the following informalities, for example: "Independent" should be replaced with "An independent" [claim 1, line 1]; "Unit" [line 1 of each of claims 2 through 11] should be replaced with "The unit"; and, "comp8irse" [claim 7, line 2] is a typographical error introduced via the preliminary amendment of December 11, 2001.

Appropriate correction is required.

7. Claim 6 is objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim may not depend from another multiple dependent claim. See MPEP § 608.01(n).

Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 U.S.C. § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1 through 5 and 7 through 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and contain numerous grammatical and idiomatic errors.

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For example, the limitations “on the one hand a stream of fresh air (AN) obtained from outside the building and on the other hand a stream of stale air (AV) from outside the building” appearing in claim 1 are not clear as written.

Regarding claim 1, the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

The indefinite pronoun “it” appearing in each of claims 9 and 10 renders these claims indefinite with respect to the scope of protection sought. Recommend replacing “it” with a direct recitation of the element(s) referred to by the pronoun “it”.

The limitations “the running or stopping of the or each entry fan (38) and/or the or each extraction fan (44, 46)” appearing in claim 11 is generally incomprehensible due to lack of antecedent basis problems, idiomatic informalities, and multiple alternatives appearing in the claim.

The above is merely an indicative, and not necessarily an exhaustive, list of 35 U.S.C. 112, second paragraph, problems. Applicant is therefore advised to carefully review all of the claims for additional problems. Correction is required of all of the 35 U.S.C. 112, second paragraph problems, whether or not these were particularly pointed out above.

Claim Rejections - 35 U.S.C. § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. As best can be understood in view of the indefiniteness of the claims, claims 1 through 5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by *Oberschmid (DE 40 07 963 A1--of record)*.

Oberschmid (DE 40 07 963 A1) discloses a flexible foil heat exchanger having a cross section of undulating shape for two fluid flows essentially as claimed.

The reference thus reads on the claims.

12. The non-application of art against claims 8 through 11 should not be construed as an indication that the claims contain allowable subject matter but rather that the claims could not be examined on the merits due to indefiniteness.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Disselbeck et al.*, *Ramm-Schmidt et al.*, *Lowenstein et al.*, and *Holmberg et al.* are examples of flexible heat exchangers.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

July 26, 2002


LJILJANA CIRIC
PATENT EXAMINER